

# Fair Use Disclaimer

The “Fair use” doctrine is codified in the Copyright Act of 1976 and states in part: “... the fair use of a copyrighted work ... for purposes such as criticism, comment, news reporting, teaching, scholarship, or research, is not an infringement of copyright.”<sup>1</sup> The doctrine recognizes that there are circumstances in which the Act’s goals of encouraging creative and original work are better served by allowing the use of copyrighted work than prohibiting such use.<sup>2</sup> Thus, the doctrine provides an affirmative defense to claims of copyright infringement and creates a limited privilege to use the copyrighted materials in a reasonable manner and without the owner’s consent.<sup>3</sup> The scope of the fair use doctrine is wider when use relates to issues of public concern.<sup>4</sup> A copyrighted work is fair use, if the public interest in free flow of information outweighs the copyright holder’s interest in exclusive control over his/her work.<sup>5</sup> The statutory criteria for fair use and the statutory fair use exception in general were intended by Congress to codify, not to supercede, the common law doctrine of fair use.<sup>6</sup> One of the most important factor in determining whether use of copyrighted work is fair is whether use tends to interfere with sales of the copyrighted material.<sup>7</sup> Other factors include the purpose and character of use, the nature of the copyrighted material, and the amount and substantiality of material used in relation to copyrighted work as a whole.<sup>8</sup>

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<sup>1</sup> 17 USCA § 107.

<sup>2</sup> *Robinson v. Random House, Inc.*, 877 F.Supp. 830, 840 (1995).

<sup>3</sup> *Id.*, *Fisher v. Dees*, 794 F. 2d 432, 435 (1986).

<sup>4</sup> *National Rifle Ass’n of America v. Handgun Control Federation of Ohio*, 15 F.3d 559, 562 (1994). See also, *Consumers Union of United States, Inc. v. General Signal Corp.*, 724 F.2d 1044 (1983).

<sup>5</sup> *Lamb v. Starks*, 949 F.Supp. 753, 757 (1996).

<sup>6</sup> *Elsmere Music, Inc. v. National Broadcasting Co., Inc.*, 482 F.Supp. 741, 745 (1980).

<sup>7</sup> *Amsinck v. Columbia Pictures Industries, Inc.*, 862 F.Supp. 1044, 1048 (1994). See also, *Love v. Kwitny*, 706 F.Supp. 1123 (1989) (effect of use upon the potential market for or value of the copyrighted work); *National Rifle Ass’n of America*, *supra* (effect of use upon potential market for or value of copyrighted work).

<sup>8</sup> 17 USCA § 107; *Metro-Goldwyn-Mayer, Inc. v. American Honda Motor Co., Inc.*, 900 F.Supp. 1287, 1299, 1300 (1995). See also, *Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.*, 780 F.Supp. 1283 (1991); *Twin Peaks Productions, Inc. v. Publications Intern. Ltd.*, 996 F.2d 1366 (1993). See also, *CSM Investors, Inc. v. Everest Development, Ltd.*, 840 F.Supp. 1304 (1994); *American Geophysical Union v. Texaco Inc.*, 802 F.Supp. 1 (1992).